

ANSWERS TO THE GUIDING QUESTIONS

Independent submission (ITALY)

What are examples of legislation, policies or programmes that effectively strengthen families and prevent separation?

LEGISLATION

Italian Law n. 184/1983, improved with the adoption of the Law n. 149/2001, provides a hierarchical order in the decision on alternative care of the child. In absence of serious risk factors (such as violence, pedophilia or other), Italian law prescribes:

- **(i)** the preeminent right of the child to grow up with his/her parents; his/her removal must always be considered as the last resort. That is, it is possible only after trying to support child's parents in the best possible way (by economic, working, training, housing assistance and so on);
- when it is necessary a separation from his/her parents, the law provides that the judge must, first of all, **(ii)** identify a member of the extended family to entrust the child, up to the IV degree of kinship;
- if no member of the extended family is available or is unable to take care of the child, **(iii)** the Italian law provides that it will be possible to start a foster care;
- uniquely in the event that no kind of alternative family care is available, the judge can decide the institutionalization of the child.

Unfortunately, in majority cases, judges do not accurately apply Law n. 184/1983.

1 PRACTICE: in the case C.F. v Italy (146/2021-CRC), because the mental illness of C.F.'s mother, the judge immediately ordered the placement of mother and child into an institution, without:

- taking into consideration other alternative care provided by law and;
- never heard C.F. on the matter.

In two proceedings, two judges have not considered other possible alternative care, which instead the Italian law provides in a hierarchical way:

(i) that the C.F.'s mother received psychological, training and housing assistance, so C.F. could remain in his family (he lived near an aunt and a cousin very fond of him), friend, school and social environment;

(ii) that, alternatively to the institutionalization with his mother, C.F. lived with his father, supporting him, if necessary;

(iii) that, alternatively to the institutionalization with his mother, C.F. was lived with a member of the extended family within the fourth degree of kinship. In the specific case, an aunt had formally asked to be able to be appointed as C.F. foster parent, but no investigation was carried out:

__to verify her parental capacity;

__to verify the suitability of the environment where C.F. would live (that is, in a house he already knew and where he often lived) and;

__to evaluate the fact that C.F. would live with a cousin who he considers like a brother, with whom he played every day and he loved very much.

In her second decision, the judge decided that C.F. go to live in foster care, with a stranger family.

2 PRACTICE: against the decision of the judge, from 2018, the social services are detaining C.F. in an institution. They never proposed or worked for other forms of alternative care.

POLICIES: they are not so much known, because there is a lack of transparency on the destination of funds, nor there is a national, regional or provincial institutional database that can be consulted. This is a fundamental aspect: the possibility to verify whether the allocated funds are more aimed at the payment of the tuitions of the institutions for children or at the support of families, in order to avoid unnecessary separation of children from their families (considering that a child can be economically, psychologically and educationally supported within his/her family with an amount about half, or even a third, lower than the amount necessary to support him/her in an institution.

What are examples of successful family reunification, and what factors contribute to their success?

There are really few examples of successful family reunification in Italy. Even if the Law n. 184/1983 provides that separation of children is always and only temporary in nature and that it cannot exceed a period of 24 months:

- 1) once children enter into an institution or they are taken in foster care, it is very likely they do not leave that alternative care until they reach the age of majority;
- 2) too often there is no trust in the family's positive resources (extended family included) and it can happen that maintenance of family relationships is hindered. Therefore, in the rare cases in which the return to the family takes place, it is often difficult for the child to be able to recover the previous "family, affective and emotional" daily life.

PRACTICE: in the 146/2021-CRC case, C.F. is detained into an institution from three years, against two judicial decrees. In these three years, social services have interrupted all C.F.'s family relationships several times, in particular when the family members tried to protect C.F.'s rights before a judge. Social services has:

___denied to C.F. free relationships with all family members (except for the mother who suffered of a psychiatric pathology);

___unheard all C.F.'s requests to be able to meet often and freely his family members;

___never tried to start assistance for a C.F.'s family reunification.

What are the examples of legislation, policies or practices to support effective monitoring, access to complaints mechanisms or interdisciplinary and judicial oversight of children in alternative care?

LEGISLATION: in Italy there is no specific law on monitoring, complaints mechanisms or interdisciplinary and judicial oversight of children in alternative care. It exists only the "traditional" judicial mechanism for complaints, based on the adults "approach and perspective". Besides, Italian judicial mechanism is well known to be too long and too expensive.

CHILDREN: it is very infrequent that a lawyer was assigned to children. Recently, the Italian Court of Cassation (25th January 2021, n.1471) decided that, in alternative care, a lawyer must always be

assigned to children. However, in Italy jurisprudence is not binding. It is therefore necessary, for the full protection of children's rights in alternative care, that this must be foreseen by national law.

OTHER MECHANISMS

In Italy it is possible to contact the Guarantor for children's rights, both at a regional and national level, but:

1) often children do not know that a Guarantor of their rights exist. On the homepages of their websites, it is difficult to identify the "complaints" section. Some Guarantor (for example of the Sicily) do not have a website.

2) it was verified: **(i)**_that telephone or e-mail address of some Guarantors are inactive or do not answer (Lazio, Abruzzo and Umbria regions) **(ii)**_even if contacted, they declare themselves incompetent or do not have the tools to intervene. Only the Autonomous Province of Trento and Bolzano proved to be efficient and dynamic (it is also possible to contact them via Whatsapp) and available to intervene directly to protect the minor.

PRACTICE

In the 146/2021-CRC case, the Guarantor of children's rights of Lombardy was contacted by C.F.'s aunt twice, for the same reason. The answer and the help given to C.F. was different, due to the fact that the guarantor was change in person.

The first time, Dott. Pagani (Prot. n. 202100117, 29th January 2020), has fully protected C.F.

The second time, Dott. Bettiga (Prot. n. 202000142/2020, 29th January 2020) declared himself incompetent and then refused to protect C.F.

How can we work to ensure that children who are or have been provided alternative care and have been victims of human rights violations are offered access to effective legal and other remedies?

- 1) Provide for a supervisor with inspective functions, who can:
 - (i)**_personally verify where a child live temporarily in alternative care, **(ii)**_whatever deems necessary and even without notice, **(iii)**_his/her physical, mental, emotional and social conditions, including his/her "social folder" and the *status* of any programmes undertaken and **(iv)**_listening to and taking into account any child's needs or views.
- 2) Considering their age, making children's rights known to them:
 - __hand delivering the CRC;
 - __explaining the CRC by external experts (not only by people who are offering them the alternative care and by those have no kind of "conflict links" or "conflict of interest" with the institution or with the Italian network of institutions)
- 3) If the child doesn't know reading or understanding completely the Italian language, the CRC have to be translated into his/her mother language;
- 4) It must be explained to children in alternative care which possible remedies (national and international) are available for any violations of their rights, giving the opportunity to have access to them at anytime;

- 5) A lawyer must be always assigned to children in alternative care, free of charge. It must be compulsory that the child's lawyer has proper training in national and international children's rights, who knows how to apply and correctly interpret the CRC, and who has no kind of "conflict links" or "conflict of interests" with the institution or with the Italian network of institutions.
- 6) The child must always be able to contact his/her lawyer, every time his/her requests (by telephone, traditional mail or e-mail)

PRACTICE

In the 146/2021-CRC case, in three years and three judgments, no judge never heard C.F. and no lawyer was assigned to him; the sheet of paper with the telephone and e-mail numbers of the Guarantor of children's rights and of the CRC-Committee delivered to C.F., to give him the opportunity to make a direct complaint for his illegal detention in an institute, it was ripped by the educators of the institution; the social services prohibited the aunt from delivering to C.F. the CRC; the manager of the institution and the social services prohibited the aunt (despite the direct request of the Committee-CRC) from meeting C.F., in order to ask him a written consent to make a complaint to the Committee in his favour; social services have prohibited the father and all members of the extended family, from talking to Christian about his rights and how to act in order to report a violation of them.

What are characteristics of high-quality alternative care?

- 1) That in their operations, all stakeholders always keep in mind that alternative care:
 - (i)_has a temporary nature;
 - (ii)_its purpose is to help parents to be capable again in taking care of their children;
 - (iii)_as soon as possible, the child should be reintegrated in his/her family, friend, social and school environment
- 2) For this reason, the ties with parents, with the extended family, with friends, with schoolmates or with anyone the child requests, should never be interrupted;
- 3) The child must always be informed that alternative care is (i)_temporary and that (ii)_its purpose is exclusively to help him/her to come back to his/her family.

If you are a child or an adult with experience of child protection systems, how would you define high-quality care?

In addition to all is written *supra*,

- 1)_even if declared temporarily unable in taking care of their children, and only if there is no serious danger for them, the children must remain with their parents, who have to be supported in the best possible way (with specific training, socially, economically, psychologically and so on);
- 2)_Meantime, the members of extended family or other persons known by the children and fond of them, must be contacted as soon as possible and to be informed on the possibility of becoming temporarily foster parents of those children;
- 3)_Whereas the parents, despite the support, are still unable to take care of their children, the members of extended family or other persons known by the children and fond of them, previously

contacted, be involved in the proceeding for determination the best alternative care for the children;

4)_Taking her age and maturity into account, children must be participated in the determination of their alternative care and their needs and views must be taken into consideration;

5)_Only in the event that no family members or any other person known and affectively fond to children is not willing, foster care can be choose as alternative care;

6)_The institutionalisation of children must always be the *extrema ratio*;

7)_Whatever alternative care chosen for the child, be respected his/her right to preserve and to maintain family and friend relations, if possible, with no limits in frequency, quality and quantity of time, especially if there is a deep emotional bond;

8)_As provided by the Guidelines for the Alternative Care for Children (GACC), **(i)** that periodic updates are carried out (at least, every three months), checking if that alternative care is still the best for the child in that moment.

What are examples of measurements of high-quality alternative care?

1)_The percentage of children who are reintegrated in their family;

2)_ Good practices that reduce the time separation of children from their family: this would confirm the high-quality of the alternative care that was chosen

What are characteristics or practices that should be avoided or eliminated in order to ensure high-quality care is provided?

1)_Violation by all institutions, public and childcare private, of **(i)** national law, **(ii)** the CRC **(iii)** and the GACC without any control an without any individual accountability;

2)_That no kind of enterprise is involved in the management of childcare institutions or in developing reports to determine whether staying in that institution is the best alternative care for a child.

PRACTICE:

1)_in the 146/2021-CRC case, the judges failed to apply Italian law n.184/1983, the CRC and completely ignored the GACC

2)_the enterprise that manages the childcare institution where social services have decided that C.F. has to live, is the same enterprise that, through its employees (that are social services too), reports to the judge that the C.F.'s institutionalization is in his best interest and that is the best possible alternative care for him

3)_Avoid initiatives by childcare institutions contrary to the law and not homogeneous

How and to what extent do current legislation, policies and programmes ensure high-quality alternative care?

- 1)_The legislation_it is quite sufficient. The problem is that it is often not correctly applied;
- 2)_However, it would be amended the article 403 of the Italian Civil Code, where it allows the removal of children by social services even in absence of a decision of a judicial authority.

What are the factors, in your context, that contribute to the institutionalisation of children, and how can they be addressed to prevent it?

- 1)_Lack of support for families in difficulty;
- 2)_Discrimination of the member of the extended family (it seems that all its members had been "infected with the virus of incapable of taking care of children" that their parents have);
- 3)_Failure to comply with legislation (national and international) and the GACC, which provide for institutionalization of children as a last resort;
- 4)_The lack of ad hoc training on children's rights and corresponding mechanisms of complaints.

How can policy makers strengthen cross-border cooperation and coordination to facilitate improved protection and care for children?

Adopting an international convention (or an optional protocol) on the subject

What measures can be taken to ensure there is a well-trained, supported and supervised multi-sectoral workforce in your context or area of work?

Organizing *ad hoc* training courses by impartial and independent institutes (such as university) and not financed by private sector.

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